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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,601	03/29/2004	Kazumasa Takabayashi	040159	9726
23850	7590	04/07/2006	EXAMINER	
ARMSTRONG, KRATZ, QUINTOS, HANSON & BROOKS, LLP 1725 K STREET, NW SUITE 1000 WASHINGTON, DC 20006			SAYADIAN, HRAYR A	
			ART UNIT	PAPER NUMBER
			2828	

DATE MAILED: 04/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/810,601	<b>Applicant(s)</b> TAKABAYASHI ET AL.	
	<b>Examiner</b> Hrayr A. Sayadian	<b>Art Unit</b> 2828	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-17 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**ELECTION REQUIREMENT**

1. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from the ones described below.
2. This application and Claims 1-17 are directed to the following patentably distinct species:
  - A. embodiment described in [0029]-[0045] (the First Embodiment, as described with respect to FIG. 1; the exclusive characteristics of Species A is/are identified by comparison with those for embodiment B specified below);
  - B. embodiment described in [0046]-[0050] (the Second Embodiment, as described with respect to FIG. 5; having mutually exclusive characteristics described in [0047]; namely, a reflection type wavelength tunable filter 13 instead of an acousto-optic tunable filter 3 is used, and no reflector 6 is provided); and
  - C. embodiment described in [0051]-[0052] (the Third Embodiment, as described with respect to FIG. 9; having mutually exclusive characteristics described in the first sentence of [0052]; namely, an optical detector 10C is provided detecting the intensity of the beam passing through the reflection type wavelength tunable filter 13).

Additionally, Species A, B, and C each includes two sub-Species:

1. An embodiment wherein the Free Spectrum Range ("FSR") of etalon 5B is twice the FSR for etalon 5A (see, for example, the first sentence of [0049], and claim 5).
  2. An embodiment wherein the FSR of etalon 5B equals the FSR for etalon 5A (see, for example, the first sentence of [0049], and claim 4).
3. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species from the ones described above (A1, A2, B1, B2, C1, and C3), even though this requirement is traversed. Applicant is advised that a reply to this requirement must include:
  1. an identification of the species that is elected consonant with this requirement, and
  2. a listing of all claims readable thereon, including any claims subsequently added.

Art Unit: 2828

An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

If claims are added after the election, applicant must indicate which are readable upon the elected species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

#### CLOSURE

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hrayr A. Sayadian whose telephone number is (571) 272-7779. The examiner can normally be reached Monday through Friday, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minsun O. Harvey can be reached on (571) 272-1835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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James MENEFF